

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

HAROLD COMBS,	:	Case No. 1:14-cv-88
	:	
Petitioner,	:	Judge Timothy S. Black
	:	Magistrate Judge Michael R. Merz
vs.	:	
	:	
BRIAN COOK, WARDEN,	:	
Pickaway Correctional Institution,	:	
	:	
Respondent.	:	

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS OF THE
UNITED STATES MAGISTRATE JUDGE (Doc. 32)**

This habeas corpus case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court, and, on February 6, 2015, submitted a Report and Recommendations. (Doc. 32). Petitioner timely filed Objections. (Doc. 38).¹

¹ The Magistrate Judge concluded that all of Petitioner's claims for relief were procedurally defaulted and that Petitioner had not shown excusing cause and prejudice. (Doc. 32 at 9). For the first time in his Objections, Petitioner argues that he can overcome the procedural default. (Doc. 38). "A federal court will review a state prisoner's procedurally defaulted federal claim if the prisoner shows 'cause' for the default and 'prejudice' from the error, or if a manifest miscarriage of justice would otherwise result." *Sutton v. Carpenter*, 745 F.3d 787, 789-90 (6th Cir. 2014). Petitioner has not made the requisite showings necessary to excuse his procedural default.

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Reports and Recommendations should be and are hereby adopted in their entirety. Accordingly:

1. The Report and Recommendations of the Magistrate Judge (Doc. 32) is **ADOPTED** in its entirety;
2. Petitioner's Objections (Doc. 38) are **OVERRULED**;
3. Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) is **DISMISSED** with prejudice;
4. Any request for a certificate of appealability under 28 U.S.C. § 2253(c) is **DENIED**;
5. The Court **CERTIFIES** that any appeal of this Order would be objectively frivolous, and therefore **DENIES** Petitioner leave to appeal *in forma pauperis*. He remains free, however, to apply to proceed *in forma pauperis* in the Court of Appeals; and
6. The Clerk is **DIRECTED** to enter judgment accordingly, whereupon this case is **TERMINATED** on the Court's docket.

IT IS SO ORDERED.

Date: 5/26/2015

/s/Timothy S. Black
Timothy S. Black
United States District Judge